# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Appeal No.199 of 2001**

**Judgment reserved on: 5.11.2007**

**Decided on: November 14, 2007**

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**State of H.P.** **…Appellant**

**Versus**

**Vijay Kumar and others** **…Respondents**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**The Hon'ble Mr. Justice Surinder Singh, Judge.**

**Whether approved for reporting? Yes**

**For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General.**

**For the respondents : Mr. Dushyant Dadwal, Advocate, for respondent Vijay Kumar.**

**Mr. Ajay Sharma, Advocate, for respondent Veerta Verma.**

**Mr. N.K. Thakur, Advocate, for respondent Anil Kumar.**

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**Surjit Singh, Judge**

State is aggrieved by the judgment of the trial Magistrate, whereby the respondents, who alongwith deceased Paramjeet Singh, were charged with and tried for offences under Sections 406, 467, 468, 471 and 120-B read with Section 34 of the Indian Penal Code, have been acquitted.

**2.** First, the prosecution version may be noticed. Divisional Manager, Himachal Road Transport Corporation, Hamirpur (hereinafter referred to as H.R.T.C.) had arranged an auction for grant of licence for

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**Whether reporters of the local papers may be allowed to see the judgment?**

collection of adda parking fee, in respect of buses for the period from 1.5.1994 to 30.4.1995, on 30.4.1994. Accused Paramjeet Singh, who has since expired, gave the highest bid and so he was granted the licence. He was supposed to have executed an agreement in favour of the HRTC authorities, which he did execute. The agreement was submitted to the HRTC authorities, who kept the same in their record. The agreement consisted of three sheets of paper. On 10.3.1995, respondent Vijay Kumar, who is a brother of deceased accused Paramjeet Singh, approached respondent Anil Kumar and asked that the said agreement be given to him to enable him to get a photostat copy thereof prepared as the same was required for being shown to the bus operators at the time of collection of the fee. Anil Kumar gave the agreement to him. The same day, after some time, respondent Vijay Kumar returned three typed written paper sheets purporting to be the agreement, earlier taken by him. Anil Kumar kept those papers in record. Two days later, it was noticed by Roshan Lal Jaswal, Senior Assistant (since deceased) that the first two paper sheets of the agreement had been replaced by new paper sheets and the contents thereof were different from the contents of the original paper sheets, inasmuch as in the original sheets the period of licence was recorded as one year from 1.5.1994 to 30.4.1995, while in the replaced sheets the licence was stated to be for indefinite period.

**3.** On coming to know that the agreement had been taken out by respondent Vijay Kumar two days earlier on the pretext of getting a photostat copy thereof prepared and that most probably it was he who had replaced those papers, Roshan Lal Jaswal, Senior Assistant (now deceased) accompanied by PW-8 Prem Singh and respondent Anil Kumar contacted him. Vijay Kumar confessed that he had replaced the two paper sheets and expressed willingness to undo the mistake. He was taken to PW-21 Baldev Raj Sharma, the then Regional Manager, H.R.T.C.

There also he admitted that he had replaced the two paper sheets of the agreement. When he was told that police report would be lodged against him, he begged to be excused and stated that after 30th April, 1995, he would not collect the licence fee. PW-21 Baldev Raj Sharma also noticed that since the agreement was not signed by him, not even its third paper sheet which had not been replaced, the forgery committed by respondent Vijay Kumar by replacing the first two sheets, could cause no loss or damage. However, when on 30.3.1995, an auction was being organized for grant of licence for the period from 1.5.1995 onwards, Paramjeet Singh (deceased) produced a stay order from the Court, which he had obtained on the basis of the forged agreement, that is to say the agreement, the first two paper sheets of which had been replaced by respondent Vijay Kumar. Consequently, the auction could not take place. Thereafter, a compliant was filed by respondent Anil Kumar against accused Paramjeet Singh and Vijay Kumar, in the Court of Chief Judicial Magistrate, Hamirpur. The complaint is Ext.PW17/A. It was marked to the police by the Chief Judicial Magistrate for investigation. Consequently, a case was registered.

**4.** During the investigation, it came to light that there had been a criminal conspiracy among respondent Vijay Kumar, respondent Anil Kumar, who filed complaint Ext.PW17/A, respondent Veerta Verma and deceased Paramjeet Singh, to forge the agreement by replacing its two paper sheets so as to give it a look of licence for collection of *adda* parking fee in favour of deceased Paramjeet Singh for indefinite period and to achieve the object of that conspiracy, respondent Anil Kumar handed over the original agreement to respondent Vijay Kumar and respondent Veerta Verma attested the two replaced sheets of the agreement and put a back date under her signature. Specimen writings and signatures of respondent Vijay Kumar and Veerta Verma, were obtained in the

presence of a Magistrate and sent to the Government Examiner of Questioned Documents, Shimla, for comparison with their purported signatures on the first two sheets of the agreement. The Government Examiner of Questioned Documents opined that the purported signatures of Vijay Kumar and Veerta Verma on the first two sheets of the agreement tallied with their, respective, specimen signatures.

**5.** On completion of the investigation, the respondents and deceased Paramjeet Singh were challaned. They all were charged with offences punishable, under Sections 406 read with Section 34, 467 read with Section 34, 468 read with Section 34, 471 read with Section 34 and 120-B read with Section 34 of the Indian Penal Code. On their pleading not guilty, they were put on trial.

**6.** Prosecution examined 22 witnesses to bring the charge home to the respondents. Accused Paramjeet Singh died during the pendency of the trial. Respondent Vijay Kumar denied that he had procured the agreement from respondent Anil Kumar on 10.3.1995 on the pretext of getting its photostat copy prepared. Respondent Anil Kumar denied that he had handed over the agreement to respondent Vijay Kumar. Respondent Veerta Verma denied that she had attested the first two paper sheets of the agreement, as alleged. She pleaded that her purported signatures on the said two sheets were not written by her, but had been imitated by some other person.

**7.** Trial Court acquitted all the respondents. Reasons given by the trial Court for acquittal of the three respondents are different. For acquittal of respondent Anil Kumar, the reason recorded by the trial Court is that it does not stand proved that the custody of the agreement was with him or that he gave the agreement to respondent Vijay Kumar in furtherance of the alleged conspiracy.

**8.** As regards respondent Vijay Kumar, the trial Court has observed that but for the alleged confession made by respondent Vijay Kumar to PW-8 Prem Singh, Roshan Lal Jaswal, Senior Assistant (now deceased), PW-10 Krishan Lal Soni and PW-21 Baldev Raj Sharma, the then Regional Manager, there was no evidence that the agreement had been collected by him from Anil Kumar. Trial Court further observed that there was no evidence of the alleged conspiracy among the four accused, including deceased Paramjeet Singh.

**9.** For acquittal of respondent Veerta Verma, the reason given by the trial Court is that there was no evidence against her except the opinion of PW-20 B.A. Vaid that the signatures on the first two sheets of the agreement regarding attestation of those sheets, tallied with her specimen signatures and that the opinion evidence being a weak type of evidence and the same having not been corroborated by any other evidence, could not be made the basis for convicting the said respondent.

**10.** We have heard the learned Additional Advocate General and the learned counsel for the respondents and also gone through the record. A perusal of the evidence, particularly the testimony of PW-8 Prem Singh, PW-10 Krishan Lal Soni and PW-21 Baldev Raj Sharma, the then Regional Manager, makes it clear that respondent Anil Kumar is not the wrong doer, but has been wronged by respondent Vijay Kumar. PW-8 Prem Singh has stated that the agreement was obtained by Vijay Kumar from Anil Kumar in his presence on the pretext that he wanted to have a photostat copy thereof and that after some time he returned the agreement to respondent Anil Kumar, who kept the same in the record without noticing that its first two sheets had been replaced, because at that time he was busy in doing other work. PW-8 Prem Singh, PW-9 Hans Raj and PW-21 Baldev Raj Sharma, have all stated with one voice that respondent Vijay Kumar was questioned by them and also by respondent

Anil Kumar about the replacement of the two sheets of the agreement and he confessed his guilt. In view of the testimony of these three witnesses of the prosecution itself, it can legitimately be held that Anil Kumar respondent played no active role in the replacement of the first two sheets of the agreement, even though he may be guilty of the dereliction of duty of account of his having handed over the agreement to respondent Vijay Kumar and then not verifying after it was returned to him that it had not been tampered with or replaced..

**11.** So far as respondent Vijay Kumar is concerned, the reasoning adopted by the trial Court for his acquittal is perverse. It has been held by the learned Magistrate that there is no evidence against respondent Vijay Kumar about his having procured the agreement on 10.3.1995 from respondent Anil Kumar except his extra judicial confession to PW-8 Prem Singh, PW-10 Krishan Lal Soni and PW-21 Baldev Raj Sharma. PW-8 Prem Singh very categorically stated that on 10.3.1995 Vijay Kumar, accompanied by one more man, came to the office and enquired from him about the official of the HRTC, who dealt with the building cell and on his telling him that Anil Kumar used to look after the work of building cell, he (respondent Vijay Kumar) disclosed that he wanted to procure a copy of the agreement pertaining to parking fee of the bus stand, the licence for which had been given to Paramjeet Singh, and that thereafter he went to respondent Anil Kumar and asked him that he wanted a copy of that agreement. He stated that when Anil Kumar told him that he had already procured one copy and what for another copy was required, Vijay Kumar said that the earlier copy had been lost and so he needed another copy to show it to the bus operators. He stated that Anil Kumar then handed over the agreement to respondent Vijay Kumar to enable him to have its photostat copy and after some time, Vijay Kumar returned the papers purporting to be the agreement to Anil Kumar and that

it was on 13th March, 1995 that Roshan Lal Jaswal (since deceased) checked the record and disclosed to all his colleagues, sitting in a common hall, that the first two sheets of the agreement had been replaced. He also stated that thereafter respondent Vijay Kumar was traced and questioned about the replacement of the first two sheets of the agreement and he admitted his fault. He further stated that respondent Vijay Kumar was then taken to PW-21 Baldev Raj Sharma, the then Regional Manager and there also he admitted his fault and requested that matter be not reported to the police and assured that he would not be collecting fee on behalf of his brother Paramjeet Singh, the licence holder, beyond 30th April, 1995, which was not very far off. There does not seem to be any reason to disbelieve the testimony of the witness, particularly when it is corroborated by PW-10 Krishan Lal Soni and PW-21 Baldev Raj Sharma. The testimony of PW-8 Prem Singh is further corroborated by the testimony of PW-2 Rajesh Kumar, District Treasurer. The witness has stated that the ream of judicial papers containing the second sheet of agreement which is Ext.PW13/I and which bears No.805239 of the year 1994, had been issued to Khyali Ram, Stamp Vendor, on 6.3.1995. The original agreement was executed by deceased accused Paramjeet Singh in favour of the Regional Manager, HRTC, Hamirpur before 13.6.1994, because the Oath Commissioner respondent Veerta Verma attested it on 13.6.1994 as is clear from the third paper sheet of the agreement Ext.PW21./A, which is admittedly the part of the original agreement.

**12.** The fact that the second paper sheet of the agreement Ext.PW13/I was issued from the Treasury only on 6.3.1995, proves to the hilt that this paper was prepared and replaced for paper sheet No.2 of the original agreement after 6.3.1995. The oral evidence of PW-8 Prem Singh, PW-10 Krishan Lal Soni and PW-21 Baldev Raj Sharma, is thus

corroborated by independent evidence in the form of the testimony of PW-2 Rajesh Kumar.

**13.** It is not in dispute that the agreement was used by deceased Paramjeet Singh, the brother of respondent Vijay Kumar, to procure a stay order from the Court. The fact that Vijay Kumar replaced the first two sheets of the agreement and deceased Paramjeet Singh used the replaced agreement as a document for procuring the order staying the auction for the period beyond 30.4.1995, is enough to conclude that there was a conspiracy between Vijay Kumar and deceased Paramjeet Singh, to forge the agreement by replacing its first two sheets. The first page bears a purported signature of respondent Vijay Kumar. The same is Ext. PW13/H. His purported signature is Q-6, which has been opined by PW-20 B.A. Vaid to tally with his (respondent Vijay Kumar's) specimen signatures/writings Ext. PW20/5, Ext.PW20/10 and Ext.PW20/11. However, the prosecution has not proved that Ext. PW20/5, Ext.PW20/10 and Ext.PW20/11 are the specimen signatures/writings of Vijay Kumar and, therefore, the opinion evidence of the expert qua the purported signatures marked Q-6 on Ext.PW13/H is of no avail to the prosecution. But the above discussed evidence proves to the hilt that respondent Vijay Kumar and deceased accused Paramjeet Singh conspired to forge the agreement and in furtherance of the said conspiracy the agreement was forged, and the forged agreement was used as genuine to lay claim for collection of *adda* parking fee for the period beyond 30.4.1995, when the grant of licence in favour of Paramjeet Singh was to come to an end. So, respondent Vijay Kumar is held guilty of an offence, under Section 120-B read with Sections 467, 468 and 471 of the Indian Penal Code.

**14.** Charge against the third respondent, namely Veerta Verma, does not stand proved beyond reasonable doubt. There is no evidence against her barring the opinion of Handwriting Expert PW-20 B.A. Vaid

that her purported signatures marked Q-1 on the first paper sheet Ext.PW13/H and Q-2 on the second paper sheet Ext.PW13/I of the agreement, are similar to her specimen writings and signatures Ext.PW6/C, Ext.PW6/D, Ext.PW6/E, Ext.PW6/F, Ext.PG6/G and Ext.PW6/H and admitted writings A-1 to A-4 on/in register Ext.PW3/A. The respondent admits in her statement, under Section 313 Cr. P.C that the aforesaid specimen and admitted writings and signatures are hers, but she denies that the questioned signatures marked Q-1 and Q-2 on Ext.PW13/H and Ext.PW13/I, respectively, are in her hand. It is by now well settled that the opinion evidence of Handwriting Expert is a weak type of evidence and it cannot be safely relied upon to convict a person of the offence of forgery without independent and reliable corroboration. Reference in this behalf may be made to the following judicial precedents:

i) ***S. Gopal Reddy*** *Vs.* ***State of A.P***, ***(1996) 4 SCC 596***

ii) ***Jagmal Singh Yadav*** *Vs.* ***Aimaduddin Ahmed Khan***, ***1994 Supp (2) SCC 308***

**15.** As a result of the above discussion, appeal of the State is partly allowed. While appeal against the acquittal of respondent Anil Kumar and Veerta Verma is dismissed, appeal against the acquittal of respondent Vijay Kumar is accepted and the judgment of the trial Court acquitting him of all the charges is set aside. The said respondent is convicted of the offence, under Section 120-B read with Sections 467, 468 and 471 of the Indian Penal Code. He be produced on 6.12.2007 for being heard on the question of quantum of sentence.

**( Surjit Singh ), J**

**November 14, 2007(ss)** **( Surinder Singh ), J**